

Atty. Id. No.

8006-10006/SWH/MKW/kas

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
EVANSVILLE DIVISION

CITIZENS INSURANCE COMPANY OF)
THE MIDWEST, an Indiana Corporation, as)
Subrogee of William Magee)
Plaintiff,) Case No. 3:11-cv-40-RLY-WGH
v) Honorable Richard L. Young
LG ELECTRONICS, USA, INC., a New Jersey)
Corporation, and SEARS ROEBUCK &)
COMPANY, a New York Corporation,) Magistrate William G. Hussmann
Defendants.)

MOTION TO BAR

Defendants, LG Electronics, USA, Inc. and Sears Roebuck & Co., by their attorneys, Johnson & Bell, Ltd., pursuant to Federal Rule of Evidence 702 in the United States Supreme Court decisions of *Daubert v. Merrill Dow Pharmaceuticals*, 509 U.S. 579, 113 S.Ct. 2786 (1993) and *Kuhmo Tire Company v. Carmichael*, 526 U.S. 137, 119 S.Ct. 1167 (1993) move this Honorable Court for the entry of an order, barring plaintiff's designated Rule 26 witness, Charles Fricke, from testifying at trial regarding the design, manufacture, or safety of the refrigerator at issue, as well as the cause and origin of the fire allegedly within the subject refrigerator.

For reasons set forth in greater detail in the memorandum of law in support of defendants' motion to bar, defendants, LG Electronics, USA, Inc. and Sears Roebuck & Co., contend that Charles Fricke's deposition testimony is woefully inadequate and fails to meet the threshold requirements the United State Supreme Court has set forth for trial courts to utilize in assessing the

admissibility of expert testimony.

Charles Fricke must be barred from testifying under Federal Rule 702 because he is not qualified to testify about the design, manufacture, or safety of refrigerators. Further, his so-called methodology is totally unreliable and unscientific. Fricke will not assist the trier of fact in resolving the issue of whether the Kenmore Elite-brand TRIO model refrigerator was reasonably safe or defective and unreasonably dangerous under Indiana Product Liability Law.

WHEREFORE, defendants, LG Electronics, USA, Inc. and Sears Roebuck & Co., respectfully request that this Honorable Court enter an order, barring plaintiff's designated Rule 26 witness, Charles Fricke, from testifying at trial on the issues of design, manufacture, safety, or cause and origin of the fire of May 18, 2010.

Respectfully submitted,

JOHNSON & BELL, LTD.

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Dated: February 8, 2013

CERTIFICATE OF SERVICE

I hereby certify that on February 8, 2013 the undersigned served a copy of the foregoing documents upon the following parties via U.S. District Court ECF Filing System:

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